> remedy for a breach of contract for telecommunications services, but by enacting the savings clause, Congress specifically provided for the preservation of existing statutory and common law claims in addition to federal causes of action.

Id. at 77.

In the instant case, six of CCI's claims are based on state common law or state statutory **[**12]** grounds: intentional interference with prospective economic relations; interference with contract; business disparagement; breach of the covenant of good faith and fair dealing; unfair competition; and violation of the Utah Uniform Trade Secrets Act. CCI contends that these claims exist as separate causes of action, and were not created by the Communications Act. AT&T has not cited to any specific sections of the Communications Act which conflict with CCI's state law claims. Additionally, AT&T's contention that these claims are preempted ignores the purpose underlying section 414. In enacting the Communications Act, it is manifest that Congress intended to occupy the field of telecommunications, in order to make available to all people of the United States a rapid, efficient, reasonably-priced communications service, governed by one uniform regulatory scheme. However, inclusion of the savings clause clearly indicates Congress' intent that independent state law causes of action, such as interference with contract or unfair competition, not be subsumed by the Act, but remain as separate causes of action. Hence, while some state law claims may relate to providers of telecommunications **[**13]** service, but nevertheless stand as independent claims not arising under the Communications Act.

[*1517] Based on the foregoing, this Court holds that section 414 of the Federal Communications Act preserves CCI's state law claims.

11. APPLICATION OF FEDERAL COMMON LAW IN PREEMPTION OF STATE LAW CLAIMS

AT&T also contends that CCI's state law claims are preempted by federal common law, even absent a conflicting provision in the Communications Act. Again, AT&T relies on Ivy, supra. The Ivy court, after concluding that the plaintiffs' claims did not implicate any specific provision of the Communications Act, stated that "where neither the Communications Act itself nor the tariffs filed pursuant to the Act deals with a particular question, the courts are to apply a uniform rule of federal common law." 391 F.2d at 491. The court in Ivy explained the application of federal common law as follows:

> It seems reasonable that the congressional purpose of uniformity and equality should be taken to imply uniformity and equality of service. . . . It seems to us that the congressional purpose can be achieved only if a uniform federal law **[**14]** governs as to the standards of service which the carrier must provide and as to the extent of liability for failure to comply with such standards

Id.

AT&T also cites Nordlicht v. New York Telephone Co., 799 F.2d 859 (2d Cir. 1986), as affirming application of federal common law to actions relating to communications services. Nordlicht concerned the rates charged for international telephone service. The court noted that plaintiff did not allege violation of any specific provision of the Communications Act, but ruled that federal common law preempted Nordlicht's claims concerning the international calls. Id. at 862. The court approved and followed Ivy with respect to interstate telecommunications service, but ruled that the same considerations would justify application of federal common law to international telecommunications service.

In light of Ivy and Nordlicht, AT&T argues that this Court should determine that CCI's claims are preempted by federal common law in order to preserve the congressional purpose of uniformity and equality. However, both Ivy and Nordlicht are distinguishable [**15] from the case at bar. Ivy as well as Nordlicht dealt with the provision of telecommunications services. Ivy was an action for negligence and breach of contract in the provision of interstate telephone service, while Nordlicht addressed the rates charged for international telephone service. Clearly, such matters are governed by the Communications Act.

By way of contrast, in the case at bar, CCI's state law causes of action, which assert business disparagement, fraud, and misrepresentation, do not involve the provision of telecommunications services. Rather, those causes of action concern alleged actions by AT&T as a provider of telecommunications services. The mere fact that AT&T provides services governed by the Act is alone insufficient to bring all of AT&T's actions within the scope of that Act. CCI's claims do not implicate the standards of uniform and equal service that Ivy and its progeny sought to protect under federal common law.

Based on the foregoing, this Court holds that CCI's state law claims are not preempted by federal common law.

111. APPLICATION OF ALLEGED BREACH OF THE COMMUNICATIONS ACT IN PREEMPTION OF STATE LAW CLAIMS

AT&T's final [**16] argument for preemption is based on CCI's Seventh Cause of Action, claiming breach of the Communications Act. That claim does not allege any additional actions or misdeeds by AT&T which would constitute violations of the Act, but rather incorporates by reference the previous 237 paragraphs of the complaint. n1 [*1518] Those paragraphs, however, contain the allegations which form the basis of the state law claims. AT&T asserts that by referencing such allegations CCI has admitted that the very actions alleged in the state law claims constitute violations of the Communications Act, and that those state law claims therefore are preempted. CCI submits that there was no intended admission as claimed, and that it ought to be permitted to amend the Seventh Cause of Action. This Court agrees, and will permit amendment of that cause of action. Accordingly, plaintiff is granted leave to amend the Seventh Cause of Action.

----------Footnotes----------

n1 The Seventh Cause of Action states as follows:

238. CCI incorporates by reference paragraphs 1through 237.

239. The actions of AT&T as described above, including but not limited to AT&T deliberate violations of applicable tariffs, constitute violations of the Federal Communications Act, including but not limited to 47 U.S.C §§ 201, 202.

----------End Footnotes---------- [**17]

IV. APPLICATION OF THE FILED TARIFF DOCTRINE TO STATE LAW CLAIMS AND FEDERAL CLAIM

AT&T has also moved to dismiss CCI's federal claim, as well as any state law claims that are not preempted, as being barred by the so-called filed tariff doctrine.

Section 203 of the Communications Act requires common carriers to file with the Federal Communications Commission schedules of their charges, as well as any regulations, classifications, and practices affecting such charges. 47 U.S.C. § 203(a). The filed tariff

doctrine prohibits such carriers from charging rates other than those on file. See New Jersey Bell Tel. Co. v. Town of West Orange, 188 N.J. Super. 455,457 A.2d 1196 (Super. Ct. App. Div. 1982). The doctrine has been extended across the spectrum of regulated utilities. n2 Supreme Court, in Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 69 L.Ed. 2d 856, 101 S. Ct. 2925 (1981), explained that "'the considerations underlying the doctrine . . . are preservation of the agency's primary jurisdiction over reasonableness of rates and the **[**18]** need to insure that regulated companies charge only those rates of which the agency has been made cognizant.'" Id. at 577-78 (quoting City of Cleveland v. F.P.C., 525 F.2d 845, 854, 174 U.S. App. D.C. 1(D.C. Cir. 1976)).

----------Footnotes----------

n2 See e.g., Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577, 69 L. Ed. 2d 856, 101 S. Ct. 2925 (1981) (applying doctrine to natural gas companies); Louisville & Nashville R.R. v. Maxwell, 237 U.S. 94, 59 L. Ed. 853, 35 S. Ct. 494 (1915) (applying doctrine to railroads); Massaponax Sand & Gravel Corp. v. Virginia Elec. & Power Co., 166 Va. 405, 186 S.E. 3 (Va. 1936) (applying doctrine to electric companies).

----------End Footnotes----------

Marco Supply Co. v. AT&T Communications, Inc., 875 F.2d 434 (4th Cir. 1989), is illustrative of the typical application **[**19]** of the filed tariff doctrine in the telecommunications industry. In that case, Marco Supply Company ("Marco") allegedly had contracted with AT&T for installation of a computer-telephone network, but discovered that it was being charged more than the prices stated in the contract. The Fourth Circuit held that section 203 of the Communications Act required AT&T to charge all of its customers only those rates established in the tariffs filed with the FCC. The court stated:

> The general case law is that a regulated carrier must charge the tariff rate established with the appropriate regulatory agency, even if it has quoted or charged a lower rate to its customer.

Id. at 436. The court also noted, generally, that "the aggrieved customer cannot assert that the carrier is estopped to charge the actual tariff rate because customers are presumed to know what the applicable tariff is." Id. Further, the court explained that the purpose of the doctrine is to prevent discrimination between customers, so Marco could not enforce the contract rates which were different from the filed tariffs. Id.

In the instant case, AT&T points out that section 203 **[**20]** of the Act requires filing of tariffs not only as to the rates to be charged, but also with regard to the classifications, regulations, and practices affecting such charges. AT&T asserts that CCI's claims pertain to AT&T's business practices in providing telecommunications services, and therefore, inasmuch as CCI's claims against AT&T are based upon the alleged misrepresentations by AT&T regarding its rates, practices, or services, those claims are barred by the filed tariff doctrine. This Court declines to read the word "practices" so broadly. AT&T **[*1519]** has cited no case law in support of such a reading. n3

----------Footnotes----------

n3 The majority of cases interpreting or applying section 203 pertain to rates and not practices. See, e.g., Marco, 875 F.2d at 436 (holding that accidental or intentional misquotation of rate governed by filed tariff could not alter terms of parties' contract); MCI Tel. Corp. v. TCI Mail, Inc., 772 F. Supp. 64 (D.R.I. 1991) (same).

- - - - - - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - - - -

Additionally, **[**21]** CCI is quick to point out a major difference between typical filed-tariff cases and the case at bar: CCI is not seeking to enforce the misrepresentations. Unlike the plaintiff in Marco, who was attempting to enforce a contract containing rates below the tariff rates, CCI is not seeking to enforce AT&T's alleged misrepresentations. Rather, CCI claims that AT&T made fraudulent representations to CCI's customers regarding the rates that CCI would charge and the dealings between AT&T and CCI. CCI is seeking damages for intentional interference with prospective economic relations and business disparagement resulting from those alleged misrepresentations, Allowing CCI to proceed with its state law claims will not result in discrimination against other AT&T customers in favor of CCI. Therefore, this Court holds that the filed tariff doctrine does not act to bar CCI's state law claims against AT&T.

V. APPLICATION OF COMMUNICATIONS ACT STATUTE OF LIMITATIONS TO STATE LAW CLAIMS

Finally, AT&T moves this Court to strike from CCI's complaint all allegations regarding alleged wrongful acts by AT&T that occurred more than two years prior to the filing of the complaint, based on the two-year **[**22]** statute of limitations in the Communications Act, 47 U.S.C. § 415(b). However, this Court has held supra that CCI's state law claims do not arise under the Communications Act, but stand alone as separate state law claims. Accordingly, the state law claims are not governed by the statute of limitations contained in the Federal Communications Act.

Based on the foregoing, it is hereby

ORDERED, that AT&T's motion to dismiss CCI's state law claims on grounds of preemption is DENIED; it is further

ORDERED, that AT&T's motion to dismiss CCI's federal claim and any state law claims not preempted as being barred by the filed tariff doctrine is DENIED; it is further

ORDERED, that plaintiff is granted leave to amend and reassert the Seventh Cause of Action within 15 days from the date of this Order; it is further

ORDERED, that AT&T's motion to strike allegations regarding acts occurring more than two years prior to the filing of the complaint as being outside of the Communication Act's statute of limitations is DENIED.

DATED: November 15, 1994

J. THOMAS GREENE

UNITED STATES DISTRICT JUDGE

*501 U.S. 597, *; 111 S. Ct. 2476, **;*
*115 L. Ed. 2d 532, ***; 1991 U.S. LEXIS 3632*

WISCONSIN PUBLIC INTERVENOR, ET AL., PETITIONERS *v.* RALPH MORTIER, ET AL.

NO. 89-1905

SUPREME COURT OF THE UNITED STATES

501 U.S. 597; 111 S. Ct. 2476; 115 L. Ed. 2d 532; 1991 U.S. LEXIS 3632; 59 U.S.L.W. 4755; 33 ERC (BNA) 1265; 91 Cal. Daily Op. Service 4747; 91 Daily Iournai DAR 7355; 21 ELR 21127

April 24, 1991, Argued
June 21, 1991, Decided

PRIOR HISTORY:

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

DISPOSITION: 154 Wis. 2d 18, 452 N. W. 2d 555, reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioners sought review of a judgment of the Supreme Court of Wisconsin, which held that the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.S. 136 et seq., preempted the regulation of pesticides by local governments.

OVERVIEW: Petitioner, a small rural community in Wisconsin, adopted an ordinance, which regulated the use of pesticides. The ordinance expressly borrowed statutory definitions from both Wisconsin laws and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C.S. 136 et seq., and was enacted under the police powers granted by Wisconsin law. Respondent applied for and was granted a permit for aerial spraying of a portion of his land. The permit included restrictions. Respondent brought a declaratory judgment action claiming the ordinance was preempted by state and federal law. On cross-motions for summary judgment, the trial court held that the town's ordinance was preempted both by FIFRA and state statute and the court was affirmed on appeal. Given the importance of the issue and the conflict of authority, the court granted certiorari and reversed the state court. The court agreed with the amicus brief opinion of the Environmental Protection Agency, the agency charged with enforcing FIFRA, and held that FIFRA did not preempt the municipal ordinance, either implicitly or explicitly. The case was remanded for further proceedings.

OUTCOME: The court, agreeing with the amicus brief opinion of the Environmental Protection Agency, the agency charged with enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), held that FIFRA did not preempt the municipal ordinance regulating the use of pesticides, either implicitly or explicitly. The judgment of the lower state court was reversed, and the case was remanded for further proceedings.

CORE TERMS: pesticide, regulation, legislative history, ordinance, pre-emption, local regulation, labeling, pre-empted, localities, pre-empt, regulatory authority, local authorities,

pre-emptive, political subdivision, authority to regulate, congressional intent, authorization, manifest, village, federal law, state law, impliedly, statutory language, registration, inspection, ambiguous, cooperate, interstate commerce, expertise, occupy

CORE CONCEPTS - ● Hide Concepts

Governments : Local Governments : Police Power
Governments : State & Territorial Governments : Police Power
As amended, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.S. § 136 et seq., specifies several roles for state and local authorities.

Governments : State & Territorial Governments : Police Power
The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) authorizes the Environmental Protection Agency administrator to enter into cooperative agreements with the states to enforce FIFRA provisions. 7 U. S. C. S. §§ 136u, 136w-1.

Governments : State &Territorial Governments : Police Power
As part of the enforcement scheme, the Federal Insecticide, Fungicide and Rodenticide Act requires manufacturers to produce records for inspection upon request of any officer or employee of the Environmental Protection Agency or of any state or political subdivision, duly designated by the administrator. 7 U.S.C.S. § 136f(b).

Governments : Local Governments : Police Power
Governments : State &Territorial Governments : Police Power
The Federal Insecticide Fungicide and Rodenticide Act directs the Environmental Protection Agency administrator to cooperate with any appropriate agency of any state or any political subdivision thereof. 7 U.S.C.S. § 136t(b).

Governments : State & Territorial Governments : Police Power
The provisions of 7 U.S.C.S. § 24(a) specify that states may regulate the sale or use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Federal Insecticide, Fungicide and Rodenticide Act. 7 U.S.C.S. § 136v(a).

constitutional Law : Supremacy Clause
&Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, state laws that interfere with, or are contrary to the laws of congress, made in pursuance of the constitution are invalid.

Constitutional Law : Supremacy Clause
The ways in which federal law may preempt state law are well established and in the first instance turn on congressional intent.

Governments : Legislation : Construction & Interpretation
Congress' intent to supplant state authority in a particular field may be express in the terms of the statute.

Governments : Legislation : Construction & Interpretation
Absent explicit preemptive language, congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is so pervasive as to make reasonable the inference that congress left no room for the states to supplement it, if the act of congress touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject, or if the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority.

Governments : Legislation : Construction & Interpretation

When considering preemption, the court starts with the assumption that the historic police powers of the states were not to be superseded by the federal act unless that was the clear and manifest purpose of congress.

Governments : Legislation : Construction & Interpretation

Even when congress has not chosen to occupy a particular field, preemption may occur to the extent that state and federal law actually conflict. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility, or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of congress.

Constitutional Law : Supremacy Clause

Governments : Local Governments : Police Power

It is axiomatic that for the purposes of the supremacy clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws.

Governments : Legislation : Construction & Interpretation

A See 7 U.S.C.S. § 136v.

Governments : Local Governments : Duties & Powers

*Local governmental units are created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them in its absolute discretion.

Governments : Local Governments

The term "state" is not self-limiting since political subdivisions are merely subordinate components of the whole. The scattered mention of political subdivisions elsewhere in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.S. § 136, does not require their exclusion.

Governments : Local Governments : Ordinances & Regulations

A Field preemption cannot be inferred.

Governments : State & Territorial Governments : Legislatures

The 1972 enhancement of the Federal Insecticide, Fungicide and Rodenticide Act does not mean that the use of pesticides can occur only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The specific grant of authority in 7 U.S.C.S. § 136v(a) consequently does not serve to hand back to the states powers that the statute had impliedly usurped. Rather, it acts to ensure that the states could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow preemptive overlap might occur.

Governments : Local Governments : Ordinances & Regulations

The statute does not expressly or impliedly preclude regulatory action by political subdivisions with regard to local use. To the contrary, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.S. § 136, implies a regulatory partnership between federal, state, and local governments. Section 136t(b) expressly states that the administrator shaii cooperate with any appropriate agency of any state or any political subdivision thereof, in carrying out the provisions of the Act and in securing uniformity of regulations.

Governments : Local Governments : Ordinances & Regulations

Local use permit regulations, unlike labeling or certification, do not fall within an area that is preempted or even plainly addressed by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.S. § 136.

- Hide Lawyers' Edition Display

DECISION: Federal Insecticide, Fungicide, and Rodenticide Act (7 USCS 136-136y) held not to pre-empt regulation of pesticides by local governments.

SUMMARY: An ordinance adopted by a Wisconsin town, pursuant to the police power accorded under a Wisconsin statute, required a permit for the application of any pesticide to public lands, to private lands subject to public use, or for the aerial application of any pesticide to private lands. The town board had the authority, under the ordinance, to deny a requested permit, grant the permit, or grant the permit with any reasonable conditions related to the health, safety, and welfare of town residents. An individual who owned land in the town applied to the town board for a permit for aerial spraying of a portion of his land with pesticides. The town granted the individual a permit, but precluded any aerial spraying and restricted the lands on which ground spraying would be allowed. In response, the individual, in conjunction with a coalition of pesticide users, brought a declaratory judgment action against the town in a Wisconsin trial court, in which action it was claimed that the town's ordinance was pre-empted both by Wisconsin statutes and by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y). The state court, after admitting as a party defendant the Wisconsin Public Intervenor--an assistant attorney general charged under state law with the protection of environmental public rights--ruled that the ordinance was pre-empted both by Wisconsin statutes and by FIFRA. On appeal, the Supreme Court of Wisconsin, affirming, (1) expressed the view that FIFRA preempted the ordinance because FIFRA's text and legislative history demonstrated a clearly manifest congressional intent to prohibit any regulation of pesticides by local units of government, and (2) declined to address the issue of state-law pre-emption (154 Wis 2d 18, 452 NW2d 555).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by White, J., joined by Rehnquist, Ch. J., and Marshall, Blackmun, Stevens, O'Connor, Kennedy, and Souter, JJ., it was held that FIFRA did not pre-empt the regulation of pesticides by local governments, and hence did not pre-empt the town ordinance, because (1) the language of FIFRA did not explicitly pre-empt the local regulation of pesticide use; (2) the legislative history of FIFRA, standing alone, was at best ambiguous and did not suffice to show Congress' intent to pre-empt local regulation of pesticides, where such history indicated that (a) the two principal congressional committees responsible for a bill which eventually was enacted as a comprehensive revision of FIFRA disagreed over whether FIFRA pre-empted pesticide regulations by political subdivisions, and (b) none of three congressional Committees which had jurisdiction over the bill asserted that FIFRA pre-empted the field of pesticide regulation; (3) FIFRA failed to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly; and (4) there was no actual conflict either between FIFRA and the ordinance, or between FIFRA and local regulation generally.

Scalia, J., concurring in the judgment, (1) agreed that FIFRA did not pre-empt local regulation of pesticides, but (2) expressed the view that such a conclusion was proper, notwithstanding his construction of the legislative history as demonstrating that the congressional committees were in agreement that the FIFRA amendment bill pre-empted local regulation, because the practice *of* using legislative history to discover the meaning of the language of a statute passed by Congress was objectionable.

LEXIS HEADNOTES - Classified to U.S. Digest Lawyers' Edition:

[***HN1]
COMMERCE 5143

ENVIRONMENTAL LAW §6

STATES, TERRITORIES, AND POSSESSIONS §36

STATUTES 5102
Federal Insecticide, Fungicide, and Rodenticide Act -- pre-emption -- local regulation of pesticide use -- interstate commerce --

Headnote: [1A] [1B] [1C] [1D] [1E] [1F] [1G]
The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y) does not pre-empt the regulation of pesticides by local governments--and hence FIFRA does not pre-empt a town ordinance, adopted pursuant to the town's police power under state law, which requires a permit for the application of any pesticide to public lands, to private lands subject to public use, or for the aerial application of any pesticide to private lands--because (1) the language of FIFRA does not explicitly pre-empt the local regulation of pesticide use; (2) the legislative history of FIFRA, standing alone, is at best ambiguous and does not suffice to show Congress' intent to pre-empt local regulation of pesticides, where such history indicates that (a) the two principal congressional committees responsible for a bill which eventually was enacted as a comprehensive revision of FIFRA disagreed over whether FIFRA pre-empted pesticide regulations by political subdivisions, and (b) none of three congressional committees which had jurisdiction over the bill asserted that FIFRA pre-empted the field of pesticide regulation; (3) FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly; and (4) there is no actual conflict either between FIFRA and the town ordinance, or between FIFRA and local regulation generally, since (a) compliance with the ordinance and FIFRA is not a physical impossibility, (b) FIFRA does not suggest a goal of regulatory coordination solely on the federal and state levels, but rather implies a regulatory partnership between federal, state, and local governments, and (c) FIFRA provides even less indication that local ordinances must yield to statutory purposes of promoting technical expertise or maintaining unfettered interstate commerce. (Scalia, J., dissented in part from this holding.)

[***HN2]
STATES, TERRITORIES, AND POSSESSIONS 521
supremacy clause --

Headnote: [2]
Under the Federal Constitution's supremacy clause (Art VI, cl 2), state laws that interfere with, or are contrary to, the laws of Congress, made in pursuance of the Constitution, are invalid.

[***HN3]
STATES, TERRITORIES, AND POSSESSIONS 522
supremacy clause -- pre-emption of state law -- congressional intent --

Headnote: [3]
The pre-emption of state law by federal law, under the Federal Constitution's supremacy clause (Art VI, cl 2), turns in the first instance on congressional intent; Congress' intent to supplant state authority in a particular field may be express in the terms of the statute; absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if (1) a scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it, (2) the act of Congress touches a field in which the federal interest is so dominant that the federal

system will be assumed to preclude enforcement of state laws on the same subject, or (3) the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority.

[***HN4]
STATES, TERRITORIES, AND POSSESSIONS 533
supremacy clause -- pre-emption of state law -- police powers --

Headnote: [4]
In considering whether federal law pre-empts state law, under the Federal Constitution's supremacy clause (Art VI, cl 2), a court starts with the assumption that the historic police powers of the states are not to be superseded by a federal act unless such is the clear and manifest purpose of Congress.

[***HN5]
STATES, TERRITORIES, AND POSSESSIONS 522
supremacy clause -- pre-emption of state law -- test for conflict with federal law --

Headnote: [5]
Even when Congress has not chosen to occupy a particular field, pre-emption of state law by federal law, under the Federal Constitution's supremacy clause (Art VI, cl 2), may occur to the extent that state and federal law actually conflict; such a conflict arises when compliance with both federal and state regulations is a physical impossibility, or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

[***HN6]
STATES, TERRITORIES, AND POSSESSIONS 521
supremacy clause -- local ordinances --

Headnote: [6]
For purposes of the Federal Constitution's supremacy clause (Art VI, cl 2), the constitutionality of local ordinances is analyzed in the same way as that of statewide laws.

[***HN7]
ENVIRONMENTAL LAW 56

EVIDENCE 5167

MUNICIPAL CORPORATIONS § 17

STATES, TERRITORIES, AND POSSESSIONS 533.5

STATUTES §164
Federal Insecticide, Fungicide, and Rodenticide Act -- local regulation of pesticide use -- pre-emption --

Headnote: [7A] [7B] [7C]
The language of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y) does not demonstrate a congressional intent to pre-empt the local regulation of pesticides, because (1) 7 USCS 136v plainly authorizes the "States" to regulate pesticides and just as plainly *is* silent with reference to local governments, and mere silence in this context cannot suffice to establish a clear and manifest purpose to pre-empt local authority; (2) even if the express grant of regulatory authority to states under 136v cannot be read as applying to municipalities, it does not follow that municipalities are left with no regulatory authority, but rather this means that localities, while not being able to claim the regulatory

authority explicitly conferred upon the states that might otherwise have been pre-empted through actual conflicts with federal law, at a minimum are still free to regulate subject to usual principles of pre-emption; (3) the exclusion of political subdivisions cannot be inferred from the express authorization to states under 136v, because (a) political subdivisions are components of the very entity which FIFRA empowers, and (b) a more plausible reading of such authorization leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the option of leaving local regulation of pesticides in the hands of local authorities; and (4) no other textual basis for pre-emption exists in FIFRA, and the contention that Congress made a clear distinction in FIFRA between nonregulatory authority--which Congress delegated to the states or their political subdivisions--and regulatory authority--which Congress expressly delegated to the states alone, while impliedly excluding political subdivisions--is undercut by (a) 7 USCS 136t(b), which mandates that the Administrator of the Environmental Protection Agency (EPA) cooperate with any appropriate agency of any state or any political subdivision thereof in carrying out the provisions of FIFRA, but which does not limit the political subdivisions to nonregulatory provisions, and (b) the fact that 7 USCS 136f(b) requires manufacturers to produce records upon the request of any employee of the EPA or of any state or political subdivision designated by the Administrator, while 7 USCS 136u(a)(1) authorizes the Administrator to delegate to only any state the authority to cooperate in the enforcement of FIFRA.

[***HN8]
STATES, TERRITORIES, AND POSSESSIONS 54
delegation of powers --

Headnote: [SI
Local governmental units are created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them in the state's absolute discretion.

[***HN9]
STATUTES 5145
legislative history --

Headnote: [9A] [9B]
Legislative history materials are not generally so misleading that jurists should never employ them in a good-faith effort to discern legislative intent. (Scalia, J., dissented from this holding.)

[***HN10]
ENVIRONMENTAL LAW 56

STATES, TERRITORIES, AND POSSESSIONS 533.5

STATUTES §110
Federal Insecticide, Fungicide, and Rodenticide Act -- local regulation of pesticide use -- by town -- implied pre-emption --

Headnote: [10A] [10B]
The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y), as amended in 1972, does not impliedly pre-empt the field of pesticide regulation, either by occupying the field of pesticide regulation in general, or by closing such field to a state's political subdivisions, because (1) 7 USCS 136v(a), which delegates authority to regulate pesticides to states, can be read to contemplate the states' redelegation of such authority to their political subdivisions, either specifically or by leaving undisturbed the states' existing statutes that would otherwise provide local government with ample authority to regulate; (2) field pre-emption cannot be inferred in view of 7 USCS 136v(b), which, by declaring that a

state shall not impose any labeling or packaging requirements in addition to or different from those required under FIFRA, would be surplusage if Congress had intended to occupy the entire field of pesticide regulation; (3) FIFRA does not otherwise imply field pre-emption, since it leaves ample room for states and localities to supplement federal efforts even absent the express regulatory authorization of 136v(a); (4) although FIFRA addresses numerous aspects of pesticide control in considerable detail, such as registration and labeling requirements, FIFRA does not equate such requirements with a general approval to apply pesticides throughout the nation without regard to regional and local factors like climate, population, geography, and water supply, and it leaves substantial portions of the field vacant, including the area of an affirmative permit scheme for the actual use of pesticides; and (5) in contrast to other implicitly pre-empted fields, FIFRA does not require that the use of pesticides can occur by only federal permission, subject to federal inspection, in the hands of federally certified personnel, and under an intricate system of federal commands, and thus the specific grant of authority to states in 136v(a), under the 1972 amendments, does not serve to hand back to the states powers that FIFRA had impliedly usurped, but rather such authority acts to insure that states can continue to regulate pesticide use and sales even where a narrow pre-emptive overlap might occur, such as with regard to the banning of mislabeled pesticides under 7 USCS 136k.

SYLLABUS: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or Act), 7 U. S. C. § 136 et *seq.*, was primarily a pesticide licensing and labeling law until 1972, when it was transformed by Congress into a comprehensive regulatory statute. Among other things, the 1972 amendments significantly strengthened the pre-existing registration and labeling standards, specified that FIFRA regulates pesticide use as well as sales and labeling, and granted increased enforcement authority to the Environmental Protection Agency (EPA). Regarding state and local authorities, FIFRA, as amended, includes provisions requiring pesticide manufacturers to produce records for inspection "upon request of any officer or employee . . . of any State or political subdivision," § 136f(b); directing the EPA to cooperate with "any appropriate agency of any State or any political subdivision thereof. . . in securing uniformity of regulations," § 136t(b); and specifying that "[a] State" may regulate pesticide sale or use so long as such regulation does not permit a sale or use prohibited by the Act, § 136v(a). Pursuant to its statutory police power, petitioner town adopted an ordinance that, inter alia, requires a permit for certain applications of pesticides to private lands. After the town issued a decision unfavorable to respondent Mortier on his application for a permit to spray a portion of his land, he brought a declaratory judgment action in county court, claiming, among other things, that the ordinance was pre-empted by FIFRA. The court granted summary judgment for Mortier, and the Wisconsin Supreme Court affirmed, finding pre-emption on the ground that the Act's text and legislative history demonstrate a clearly manifest congressional intent to prohibit any regulation of pesticides by local governmental units.

Held: FIFRA does not pre-empt local governmental regulation of pesticide use. Pp. 604-616.

(a) When considering pre-emption, this Court starts with the assumption that the States' historic powers are not superseded by federal law unless that is the clear and manifest purpose of Congress. That purpose may be expressed in the terms of the statute itself. Absent explicit pre-emptive language, congressional intent to supersede state law may nonetheless be implicit if, for example, the federal Act touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Even where Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict, as when compliance with both is a physical impossibility, or when the state law stands as an obstacle to the accomplishment of Congress' purposes and objectives. Pp. 604-605.

(b) FIFRA nowhere expressly supersedes local regulation. Neither the Act's language nor the legislative history relied on by the court below, whether read together or separately, suffices

to establish pre-emption. The fact that § 136v(a) expressly refers only to "[a] State" as having the authority to regulate pesticide use, and the Act's failure to include political subdivisions in its § 136(aa) definition of "State," are wholly inadequate to demonstrate the requisite clear and manifest congressional intent. Mere silence is insufficient in this context. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146. And the exclusion of local governments cannot be inferred from the express authorization to "State [s]" because that term is not self-limiting; political subdivisions are merely subordinate components of the very entity the statute empowers. Cf., e. *g., Sailors v. Board of Ed. of Kent Cty.*, 387 U.S. 105, 108, 18 L. Ed. 2d 650, 87 S. Ct. 1549. Indeed, the more plausible reading of the express authorization leaves the allocation of regulatory authority to the absolute discretion of the States themselves, including the options of specific redelegation or leaving local regulation of pesticides in the hands of local authorities under existing state laws. Nor is there any merit to Mortier's contention that the express references in §§ 136t(b) and 136f(b) to "political subdivision[s]" show that Congress made a clear distinction between nonregulatory authority, which may be exercised by such subdivisions, and the regulatory authority reserved to the "State[s]" in § 136v(a). Furthermore, the legislative history is at best ambiguous, reflecting a disagreement between the responsible congressional committees as to whether the provision that would become § 136v pre-empted local regulation. Pp. 606-610.

(c) FIFRA also fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly. The argument that the 1972 amendments transformed the Act into a comprehensive statute that occupied the entire pesticide regulation field, and that certain provisions, including § 136v(a), reopened certain portions of the field to the States but not to political subdivisions, is unpersuasive. Section 136v itself undercuts any inference of field pre-emption, since § 136v(b) prohibits States from enacting or imposing labeling or packaging requirements that conflict with those required under FIFRA. This language would be pure surplusage if Congress had already occupied the entire field. Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned the Act into a comprehensive regulatory statute, substantial portions of the field are still left vacant, including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides or to occupy the field of local use permitting. Thus, the specific grant of authority in § 136v(a) must be read not as an exclusion of municipalities but as an act ensuring that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur. Pp. 611-614.

(d) There is no actual conflict either between FIFRA or the ordinance at issue or between the Act and local regulation generally. Compliance with both the ordinance and FIFRA is not a physical impossibility. Moreover, Mortier's assertions that the ordinance stands as an obstacle to the Act's goals of promoting pesticide regulation that is coordinated solely at the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce are based on little more than snippets of legislative history and policy speculations and are unpersuasive. As is evidenced by § 136t(b), FIFRA implies a regulatory partnership between federal, state, *and* local governments. There is no indication that any coordination which the statute seeks to promote extends beyond the matters with which it expressly deals, or does so strongly enough to compel the conclusion that an independently enacted ordinance that falls outside the statute's reach frustrates its purpose. Nor is there any indication in FIFRA that Congress felt that local ordinances necessarily rest on insufficient expertise and burden commerce. Pp. 614-616.

COUNSEL: Thomas J. Dawson, Assistant Attorney General of Wisconsin, argued the cause petitioners. With him on the briefs was Linda K. Monroe.

Deputy Solicitor General Wallace argued the cause for the United States as amicus curiae urging reversal. With him on the brief were Solicitor General Starr, Assistant Attorney

General Stewart, Clifford M. Sloan, and David C. Shilton.

Paul G. Kent argued the cause for respondents. With him on the brief was Richard J. Lewandowski. *

* Briefs of amici curiae urging reversal were filed for the State of Hawaii et al. by Warren Price III, Attorney General of Hawaii, and Girard D. Lau and Steven S. Michaels, Deputy Attorneys General, James H. Evans, Attorney General of Alabama, Roland W. Burris, Attorney General of Illinois, Robert T. Stephan, Attorney General of Kansas, Michael E. Carpenter, Attorney General of Maine, Frank J. Kelley, Attorney General of Michigan, William L. Webster, Attorney General of Missouri, Frankie Sue Del Papa, Attorney General of Nevada, Ernest Preate, Jr., Attorney General of Pennsylvania, Paul Van Dam, Attorney General of Utah, and Jeffrey L. Arnestoy, Attorney General of Vermont; for the Conservation Law Foundation of New England, Inc., et al. by E. Susan Garsh, Robert E. McDonnell, and Maris L. Abbene; for the National Institute of Municipal Law Officers et al. by Robert J. Alfton, William I. Thornton, Jr., and Analeslie Muncy; for the Village of Milford, Michigan, et al. by Patti A. Goldman, Alan B. Morrison, and Brian Wolfman.

Briefs of amici curiae urging affirmance were filed for the State of California et al. by Daniel E. Lungren, Attorney General of California, Roderick E. Walston, Chief Assistant Attorney General, R. H. Connett, Assistant Attorney General, and Charles W. Getz III, Deputy Attorney General, and by the Attorneys General for their respective States as follows: Grant Woods of Arizona, Linley E. Pearson of Indiana, J. Joseph Curran, Jr., of Maryland, Robert J. Del Tufo of New Jersey, and Kenneth O. Eikenberry of Washington; for the American Association of Nurserymen et al. by Frederick A. Provorny and Robert A. Kirshner; for the American Farm Bureau Federation by John J. Rademacher and Richard L. Krause; for the Green Industry Council by Stephen S. Ostrach; for the Professional Lawn Care Association of America by Joseph D. Lonardo; for the National Pest Control Association et al. by Lawrence S. Ebner; and for the Washington Legal Foundation by Daniel J. Popeo, Paul D. Kamenar, and John C. Scully.

JUDGES: WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and MARSHALL, BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, post, p. 616.

OPINIONBY: WHITE

OPINION: [*600] [*540] [**2479]** JUSTICE WHITE delivered the opinion of the court.

[*HR1A]** [1A]
This case requires us to consider whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or Act), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et* seq., pre-empts the regulation of pesticides by local governments. We hold that it does not.

[*601] I

A

FIFRA was enacted in 1947 to replace the Federal Government's first effort at pesticide regulation, the Insecticide Act of 1910, 36 Stat. 331. 61 Stat. 163. Like its predecessor, FIFRA as originally adopted "was primarily a licensing and labeling statute." ***Ruckelshaus*** v. Monsanto Co., 467 U.S. 986, 991, 81 L. Ed. 2d 815, 104 S. Ct. 2862 (1984). In 1972, growing environmental and safety concerns led Congress to undertake a comprehensive revision of FIFRA through the Federal Environmental Pesticide Control Act. 86 Stat. 973. The 1972 amendments significantly strengthened FIFRA's registration and labeling standards. 7

U. S. C. § 136a. To help make certain that pesticides would be applied in accordance with these standards, the revisions further insured that FIFRA "regulated the use, as well as the sale and labeling, of pesticides; regulated pesticides produced and sold in both intrastate and interstate commerce; [and] provided **[**2480]** for review, cancellation, and suspension of registration." *Ruckelshaus, supra*, at 991-992. An additional change was the grant of increased enforcement authority to the Environmental Protection Agency (EPA), which had been charged with federal oversight of pesticides since 1970. See Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15623 (1970), 5 U. S. C. App., p. 1343. In this fashion, the 1972 amendments "transformed FIFRA from a labeling law into a comprehensive regulatory statute." 467 U.S. at 991.

As amended, FIFRA specifies several roles for state and local authorities. The statute, for example, authorizes the EPA Administrator to enter into cooperative agreements with the States to enforce FIFRA provisions. 7 U. S. C. §§ 136u, 136w-1. As part of the enforcement scheme, FIFRA requires manufacturers to produce records for inspection "upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, **[***541]** duly designated by the Administrator." § 136f(b). **[*602]** FIFRA further directs the EPA Administrator to cooperate with "any appropriate agency of any State or any political subdivision thereof." § 136t(b). Of particular relevance to this case, § 24(a) specifies that States may regulate the sale or use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Act. § 136v(a).

B

Petitioner, the town of Casey, is a small rural community located in Washburn County, Wisconsin, several miles northwest of Spooner, on the road to Superior. n1 In 1985, the town adopted Ordinance 85-1, which regulates the use of pesticides. The ordinance expressly borrows statutory definitions from both Wisconsin laws and FIFRA, and was enacted under Wis. Stat. §§ 61.34(1), (5) (1989-1990), which accord village boards general police, health, and taxing powers. n2

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n1 The town has a population of from 400 to 500 persons, large enough to enact the ordinance at issue in this case. See Washburn County Directory 1982-83, cited in Brief for Respondents 4, n. 4; Tr. of Oral Arg. 12.

n2 Section 61.34(1) provides:

"Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language."

Section 61.34(5) provides:

"For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of article XI, section 3, of the [Wisconsin] constitution it is hereby declared that this chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof."

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The ordinance requires a permit for the application of any pesticide to public lands, to private lands subject to public **[*603]** use, or for the aerial application of any pesticide to private lands. § 1.2, 2 App. to Pet. for Cert. 6. A permit applicant must file a form including information about the proposed pesticide use not less than 60 days before the desired use. § 1.3(2), id., at 7. The town board may "deny the permit, grant the permit, or grant the permit with . . . any reasonable conditions on a permitted application related to the protection of the health, safety and welfare of the residents of the Town of Casey." § 1.3(3), id., at 11-12. After an initial decision, the applicant or any town resident may obtain a hearing to provide additional information regarding the proposed application. §§ 1.3(4), (5), id., at 12-14. When a permit is granted, or granted with conditions, the ordinance further requires the permittee to post placards giving notice of the pesticide **[**2481]** use and of any label information prescribing a safe reentry time. § 1.3(7), id., at 14-16. Persons found guilty of violating the ordinance are subject to fines of up to $ 5,000 for each violation. § 1.3(7)(c), id., at 16.

Respondent Ralph Mortier applied for a permit for aerial spraying of a portion of his land. The town granted him a permit, but precluded any aerial spraying and restricted **[***542]** the lands on which ground spraying would be allowed. Mortier, in conjunction with respondent Wisconsin Forestry/Rights-of-Way/Turf Coalition, n3 brought a declaratory judgment action in the Circuit Court for Washburn County against the town of Casey and named board members, claiming that the town of Casey's ordinance is pre-empted by state and federal law. The Wisconsin Public Intervenor, an assistant attorney general charged under state law with the protection of environmental public rights, Wis. Stat. §§ 165.07, 165.075 (1989-1990), was admitted without objection as a party defendant. On cross-motions for summary judgment, the Circuit Court ruled in favor of Mortier, holding that the town's **[*604]** ordinance was pre-empted both by FIFRA and by state statute, §§ 94.67-94.71; 2 App. to Pet. for Cert. 14.

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n3 The coalition is an unincorporated, nonprofit association of individual businesses and other associations whose members use pesticides.

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The Supreme Court of Wisconsin affirmed in a 4-to-3 decision. Mortier v. *Casey*, 154 Wis. 2d 18, 452 N.W.2d 555 (1990). Declining to address the issue of state-law pre-emption, the court concluded that FIFRA pre-empted the town of Casey's ordinance because the statute's text and legislative history demonstrated a clearly manifest congressional intent to prohibit "any regulation of pesticides by local units of government." *Id.*, at 20, n. 2, and 30, 452 N.W.2d at 555, n. 2, and 560. The court's decision accorded with the judgments of two Federal Courts of Appeals. Professional Lawn *Care Association* v. *Milford*, 909 F.2d 929 (CA6 1990); Maryland *Pest Control Association* v. *Montgomery County*, 822 F.2d 55 (CA4 1987), summarily aff'g 646 F. Supp. 109 (Md. 1986). Two separate dissents concluded that neither FIFRA's language nor its legislative history expressed an intent to pre-empt local regulation. Casey, *supra*, at 33, 452 N.W.2d at 561 (Abrahamson, J., dissenting); 154 Wis. 2d at 45, 452 N.W.2d at 566 (Steinmetz, J., dissenting). The dissenters' conclusion in part relied on decisions reached by two State Supreme Courts. Central Maine *Power* Co. v. Lebanon, 571 A.2d 1189 (Me. 1990); *People* ex *rel. Deukmejian* v. County of Mendocino, 36 Cal. 3d 476, 683 P.2d 1150, 204 Cal. Rptr. 897 (1984). Given the importance of the issue and the conflict of authority, we granted certiorari. 498 U.S. 1045 (1991). We now reverse.

II

[*HR2]** [2]

[*HR3]** [3]
[*HR4]** [4]
Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. Gibbonsv. Ogden, 22 U.S. 1, 9 Wheat. 1, 211, 6 L. Ed. 23 (1824) (Marshall, C. J.). The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent. *Ingersoll-Rand* Co. v. *McClendon*, 498 U.S. 133, 112 L. Ed. 2d 474, 111 S. Ct. 478 (1990). Congress' intent to supplant state authority in a **[*605]** particular field may be express in the terms of the statute. Jones v. *Rath Packing* Co., 430 U.S. 519, 525, 51 L. Ed. 2d 604, 97 S. Ct. 1305 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is "so **[***543]** pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," if "the Act of Congress . . . touch[es] a field in which the federal interest is so dominant that **[**2482]** the federal system will be assumed to preclude enforcement of state laws on the same subject," or if the goals "sought to be obtained" and the "obligations imposed" reveal a purpose to preclude state authority. *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). See Pacific *Gas & Elec. Co.* v. State *Energy* Resources Conservation *and Development Comm'n*, 461 U.S. 190, 203-204, 75 L. Ed. 2d 752, 103 S. Ct. 1713 (1983). When considering pre-emption, "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Rice. *supra*, at 230,

[*HR5]** [5]
Even when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," Florida *Lime* &Avocado Growers, *Inc.* v. *Paul*, 373 U.S. 132, 142-143, 10 L. Ed. 2d 248, 83 S. Ct. 1210 (1963), or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U.S. 52, 85 L. Ed. 581. 61 S. Ct. 399 (1941).

[*HR6]** [6]
It is, finally, axiomatic that "for the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws." *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713, 85 L. Ed. 2d 714, 105 S. Ct. 2371 (1985). See, e. *g.*, *City of Burbank* v. *Lockheed Air Terminal, Inc.*, 411 U.S. 624. 36 L. Ed. 2d 547. 93 S. Ct. 1854 (1973).

[*606] III

[*HR1B]** [1B]
Applying these principles, we conclude that FIFRA does not pre-empt the town's ordinance either explicitly or implicitly or by virtue of an actual conflict.

A

As the Wisconsin Supreme Court recognized, FIFRA nowhere expressly supersedes local regulation of pesticide use. The court, however, purported to find statutory language "which is indicative" of pre-emptive intent in the statute's provision delineating the "Authority of States." 7 U. S. C. § 136v. The key portions of that provision state:

> "(a) . . . A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

> "(b) . . . Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

Also significant, in the court's eyes, was FIFRA's failure to specify political subdivisions in defining "State" as "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa." § 136 (aa).

[*544]** It was not clear to the State Supreme Court, however, "that the statutory language [§§ 136v and 136(aa)] alone evinced congress' manifest intent to deprive political subdivisions of authority to regulate pesticides." Casev, 154 Wis. 2d at 25, 452 N.W.2d at 557-558. It was nevertheless "possible" to infer from the statutory language alone that pesticide regulation by local entities was pre-empted; and when coupled with its legislative history, that language "unmistakably demonstrates the intent of Congress to pre-empt local ordinances such as that adopted by the Town of Casey." *Id.*, at 28, 452 N.W.2d at 559. The court's holding thus **[*607]** rested on both §§ 136v and 136(aa) and their legislative history; neither the language nor the legislative history would have sufficed alone. There was no suggestion that absent the two critical sections, FIFRA was a sufficiently comprehensive statute to justify **[**2483]** an inference that Congress had occupied the field to the exclusion of the States. Nor have the respondents argued in this Court to that effect. On the other hand, it *is* sufficiently clear that under the opinion announced by the court below, the State would have been precluded from permitting local authorities to regulate pesticides.

[*HR1C]** [1C]
[*HR7A]** [7A]
We agree that neither the language of the statute nor its legislative history, standing alone, would suffice to pre-empt local regulation. But it is also our view that, even when considered together, the language and the legislative materials relied on below are insufficient to demonstrate the necessary congressional intent to pre-empt. As for the statutory language, is wholly inadequate to convey an express pre-emptive intent on its own. Section 136v plainly authorizes the "States" to regulate pesticides and just as plainly is silent with reference to local governments. Mere silence, in this context, cannot suffice to establish a "clear and manifest purpose" to pre-empt local authority. Rice, *supra*, at 230. Even if FIFRA'S express grant of regulatory authority to the States could not be read as applying to municipalities, it would not follow that municipalities were left with no regulatory authority. Rather, it would mean that localities could not claim the regulatory authority explicitly conferred upon the States that might otherwise have been pre-empted through actual conflicts with federal law. At a minimum, localities would still be free to regulate subject to the usual principles of pre-emption.

[*HR7B]** [7B]
[*HR8]** [8]
Properly read, the statutory language tilts in favor of local regulation. The principle is well settled that local "'governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be **[*608]** entrusted to them" . . . in [its] absolute discretion."' Sailors v. *Board of Ed. of* Kent *Cty.*, 387 U.S. 105, 108, 18 L. Ed. 2d 650, 87 S. Ct. 1549 (1967), quoting *Reynolds* v. *Sims*, 377 U.S. 533, 575, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964), quoting Hunter-v. *Pittsburgh*, 207 U.S. 161, 178, 52 L. Ed. 151, 28 S. Ct. 40 (1907). The exclusion *of* political subdivisions cannot be inferred from the express authorization to the "State[s]" because political subdivisions are components of the very entity the statute empowers. Indeed, the more plausible reading of FIFRA's authorization to the States leaves the allocation of regulatory **[***545]** authority to the "absolute discretion" of the States themselves, including the option of leaving local regulation

of pesticides in the hands of local authorities.

[*HR7C]** [7C]
Certainly no other textual basis for pre-emption exists. Mortier, building upon the decision below, contends that other provisions show that Congress made a clear distinction between nonregulatory authority, which it delegated to the States or their political subdivisions, and regulatory authority, which it expressly delegated to the "State[s]" alone. The provisions on which he relies, however, undercut his contention. Section 136t(b), for example, mandates that the EPA Administrator cooperate with "any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this subchapter." As an initial matter, the section does not limit "the provisions of the subchapter" which localities are authorized to carry out to "nonregulatory" provisions. Moreover, to read this provision as empting localities would also require the anomalous result of pre-empting the actions of any agency to the extent it exercised state-delegated powers that included pesticide regulation. Likewise, § 136f(b) requires manufacturers to produce records for the inspection upon the request of any employee of the EPA "or of any State or political subdivision, duly designated by the Administrator." Section 136u(a)(1), however, authorizes the Administrator to "delegate to any State . . . the authority to cooperate in the enforcement of this [Act] through the use of its personnel." If the use of "State" **[*609]** in FIFRA impliedly excludes subdivisions, it is unclear why the one provision would allow **[**2484]** the designation of local officials for enforcement purposes while the other would prohibit local enforcement authority altogether.

[*HR1D]** [1D]
Mortier, like the court below and other courts that have found pre-emption, attempts to compensate for the statute's textual inadequacies by stressing the legislative history. *Casey*, 154 Wis. 2d at 25-28, 452 N.W.2d at 558-559; ***Professional** *Lawn* Care *Association*, 909 F.2d at 933-934. The evidence from this source, which centers on the meaning of what would become § 136v, is at best ambiguous. The House Agriculture Committee Report accompanying the proposed FIFRA amendments stated that it had "rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions." H. R. Rep. **No.** 92-511, p. 16 (1971). While this statement indicates an unwillingness by Congress to grant political subdivisions regulatory authority, it does not demonstrate an intent to prevent the States from delegating such authority to its subdivisions, and still less does it show a desire to prohibit local regulation altogether. At **least** one other statement, however, concededly goes further. The Senate Committee on Agriculture and Forestry Report states outright that it "considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives." S. Rep. **No.** 92-838, p. 16 (1972).

But other Members of Congress **[***546]** clearly disagreed. The Senate Commerce Committee, which also had jurisdiction over the bill, observed that "while the [Senate] Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, the report of that committee states explicitly that local governments cannot regulate **[*610]** pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators." S. Rep. **No.** 92-970, p. 27 (1972). To counter the language in the Agriculture and Forestry Committee Report, the Commerce Committee proposed an amendment expressly authorizing local regulation among numerous other, unrelated proposals. This amendment was rejected after negotiations between the two Committees. See 118 Cong. Rec. 32251 (1972); H. R. Conf. Rep. **No.** 92-1540, p. 33 (1972).

[*HR1E]** [1E]
[*HR9A]** [9A]

As a result, matters were left with the two principal Committees responsible for the bill in disagreement over whether it pre-empted pesticide regulation by political subdivisions. It is important to note, moreover, that even this disagreement was confined to the pre-emptive effect of FIFRA's authorization of regulatory power to the States in § 136v. None of the Committees mentioned asserted that FIFRA pre-empted the field of pesticide regulation. Like FIFRA's text, the legislative history thus falls far short of establishing that pre-emption of local pesticide regulation was the "clear and manifest purpose of Congress." ***Rice,*** 331 U.S. at 230. We thus agree with the submission in the amicus brief of the United States expressing the views of the EPA, the agency charged with enforcing FIFRA. n4

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n4 JUSTICE SCALIA's foray into legislative history runs into several problems. For one, his concurrence argues that the House Agriculture Committee made it clear that it wanted localities "out of the picture" because its Report specifies as grounds for rejecting a proposal permitting the localities to regulate pesticides the observation that the Federal Government and the 50 States provided an adequate number of regulatory jurisdictions. *Post,* at 617. But the only way to infer that the Committee opposed not only a direct grant of regulatory authority upon localities but also state delegation of authority to regulate would be to suppose that the term "regulatory jurisdictions" meant regulatory for the purposes of exercising any authority at all as opposed to exercising authority derived from a direct federal grant. H. R. Rep. No. 92-511, p. 16 (1971). The language of the Report does not answer this question one way or another.

The concurrence further contends that the Senate Agriculture Committee unequivocally expressed its view that § 136v should be read to deprive localities of regulatory authority over pesticide. This may be true, but it is hardly dispositive. Even if § 136v were sufficiently ambiguous to justify reliance on legislative history, the meaning a committee puts forward must at a minimum be within the realm of meanings that the provision, fairly read, could bear. Here the Report clearly states that § 136v should be read as a prohibition, but it is just as clear that the provision is written exclusively in terms of a grant. No matter how clearly its report purports to do so, a committee of Congress cannot take language that could only cover "flies" or "mosquitoes," and tell the courts that it really covers "ducks."

Finally, the concurrence suggests that the Senate Commerce Committee Report reconfirmed the views of the two Agriculture Committees that § 136v prohibited local pesticide regulation. *Post,* at 618-620. But the Commerce Committee at no point states, clearly or otherwise, that it agrees that the section before it does this. Rather, the Report states that "while the Agriculture Committee *bill* does not specifically prohibit local governments from regulating pesticides, the ***report*** *of* that committee states explicitly that local governments cannot regulate pesticides in any manner." S. Rep. No. 92-970, p. 27 (1972) (emphasis added). The Commerce Committee, indeed, went on to assert its policy differences with its Agriculture counterpart. It did this by attempting to strike at the root of the problem through changing the language of the provision itself. Far from showing agreement with its rival, the Committee's words and actions show a body that, first, conceded *no* ground on the meaning of the disputed language and then, second, raised the stakes by seeking to insure that the language could go only its way. On both the existence and the desirability of a prohibition on local regulation, there can be no doubt that the Commerce and Agriculture Committees stood on the opposite sides of the Senate debate.

[*HR9B]** [9B]

As for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it. As Chief Justice Marshall put it, "where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived." *United States v. Fisher,* 6 U.S. 358, 2 Cranch 358, 386, 2 L. Ed. 304 (1805). Legislative history materials are not generally so misleading

that jurists should never employ them in a good-faith effort to discern legislative intent. Our precedents demonstrate that the Court's practice of utilizing legislative history reaches well into its past. See, e. *g.,* Wallace v. Parker, 6 Pet. 680, 687-690 (1832). We suspect that the practice will likewise reach well into the future.

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[*611] [*547] [**2485]** B

[*HR1F]** [1F]
[*HR10A]** [10A]
Likewise, FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority **[*612]** over pesticide regulation impliedly. In particular, we reject the position of some courts, but not the court below, that the 1972 amendments transformed FIFRA into a comprehensive statute that occupied the field of pesticide regulation, and that certain provisions opened specific portions of the field to state regulation and much smaller portions to local regulation. See *Professional* Lawn *Care,* 909 F.2d at 933-934; *Maryland Pest Control,* 646 F. Supp., at 110-111; see also Brief for National Pest Control Association et al. as Amici Curiae 6-16; Brief for Washington Legal Foundation as Amicus Curiae 5-18. On this assumption, it has been argued, § 136v(a) could be viewed as opening the field of general pesticide regulation to the States yet leaving it closed to political subdivisions.

[*HR10B]** [10B]
This reasoning is unpersuasive. As an initial matter, it would still have to be shown under ordinary canons of construction that FIFRA's delegation of authority to "State[s]" would not therefore allow the States in turn to redelegate some of this authority to their political subdivisions either specifically or by leaving undisturbed their existing statutes that would otherwise provide local government with ample authority to regulate. We have already noted that § 136v(a) can be plausibly read to contemplate precisely such ↑redelegation. The term "State" is not self-limiting since political subdivisions are merely subordinate components of the whole. The scattered mention of political subdivisions elsewhere in FIFRA does not require their exclusion here. The legislative history is complex and ambiguous.

[2486]** More importantly, ↑field pre-emption cannot be inferred. In the first place, § 136v itself undercuts such an inference. **[*613]** The provision immediately following the statute's grant of regulatory authority to the States declares that "such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from **[***548]** those required under" FIFRA. § 136v(b). This language would be pure surplusage if Congress had intended to occupy the entire field of pesticide regulation. Taking such pre-emption as the premise, § 136v(a) would thus grant States the authority to regulate the "sale or use" of pesticides, while § 136v(b) would superfluously add that States did not have the authority to regulate "labeling or packaging," an addition that would have been doubly superfluous given FIFRA's historic focus on labeling to begin with. See *Monsanto,* 467 U.S. at 991.

Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned FIFRA into a "comprehensive regulatory statute," *Monsanto, supra,* at 991, the resulting scheme was not "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice,* .supra, at 230. To the contrary, the statute leaves ample room for States and localities to supplement federal efforts even absent the express regulatory authorization of § 136v(a). FIFRA addresses numerous aspects of pesticide control in considerable detail, in particular: registration and classification, § 136a; applicator certification, § 136b; inspection of pesticide production facilities, §§ 136e and 136g; and the possible ban and seizure of pesticides that are misbranded or otherwise fail to meet federal requirements, § 136k. These provisions reflect the general goal of the 1972 amendments to strengthen existing labeling requirements and ensure that these requirements were followed

in practice. § 136k. See *Monsanto, supra,* at 991-992. FIFRA nonetheless leaves substantial portions of the field vacant, Including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides. It certainly does not equate registration **[*614]** and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors like climate, population, geography, and water supply. Whatever else FIFRA may supplant, it does not occupy the field *of* pesticide regulation in general or the area of local use permitting in particular.

In contrast to other implicitly pre-empted fields, the 1972 enhancement of FIFRA does not mean that the use of pesticides can occur "'only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands."' *City of Burbank* v. *Lockheed Air Terminal, Inc.,* 411 U.S. at 634, quoting *Northwest Airlines* v. *Minnesota,* 322 **U.S.** 292, 303, 88 L. Ed. 1283. 64 S. Ct. 950 (1944) (Jackson, J., concurring). The specific grant of authority in § 136v(a) consequently does not **serve** to hand back to the States powers that the statute had impliedly usurped. Rather, it acts to ensure that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabled products, a narrow pre-emptive overlap might occur. As noted in our discussion of express pre-emption, it is doubtful that Congress intended to exclude localities from the scope of **[***549]** § 136v(a)'s authorization, but however this may be, the type of local regulation at issue here would not fall within any impliedly pre-empted field.

C

[*HR1G]** [1G]
Finally, like the EPA, we discern no actual conflict either between FIFRA and the ordinance before us or between FIFRA and local regulation generally. Mortier does not rely, nor could he, on the theory that compliance with the ordinance and FIFRA is a "physical impossibility." *Florida* Lime & **[**2487]** *Avocado* Growers, 373 U.S. at 142-143. Instead, he urges that the town's ordinance stands as an obstacle to the statute's goals of promoting pesticide regulation that is coordinated solely on the federal and state levels, that rests upon some degree of technical expertise, and that does not **[*615]** unduly burden interstate commerce. Each one of these assertions rests on little more than snippets of legislative history and policy speculations. None of them is convincing.

To begin with, FIFRA does not suggest a goal of regulatory coordination that sweeps either as exclusively or as broadly as Mortier contends. The statute gives no indication that Congress was sufficiently concerned about this goal to require pre-emption of local use ordinances simply because they were enacted locally. Mortier suggests otherwise, quoting legislative history which states that FIFRA establishes "a coordinated Federal-State administrative system to carry out the new program," and raising the specter of gypsy moth hordes safely navigating through thousands of contradictory and ineffective municipal regulations. H. R. Rep. No. 92-511, at 1-2. As we have made plain, the statute does not expressly or impliedly preclude regulatory action by political subdivisions with regard to local **use.** To the contrary, FIFRA implies a regulatory partnership between federal, state, *and* local governments. Section 136t(b) expressly states that the Administrator "shall cooperate with . . . any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this [Act] and in securing uniformity of regulations." Nor does FIFRA that any goal *of* coordination precludes local use ordinances because they were enacted independently of specific state or federal oversight. As we have also made plain, local use permit regulations -- unlike labeling or certification -- do not fall within an area that FIFRA's "program" pre-empts or even plainly addresses. There is no indication that any coordination which the statute seeks to promote extends beyond the matters with which it deals, or does so strongly enough to compel the conclusion that an independently enacted ordinance that falls outside the statute's reach frustrates its purpose.

FIFRA provides even less indication that local ordinances must yield to statutory purposes of promoting technical **[*616]** expertise or maintaining unfettered interstate commerce. Once more, isolated passages of legislative history that were themselves insufficient to establish a pre-emptive congressional intent do not by themselves establish legislative goals with pre-emptive effect. See, e. g., S. Rep. No. 92-838, at 16. Mortier nonetheless asserts that local ordinances necessarily rest on insufficient expertise and burden commerce by allowing, **[***550]** among other things, large-scale crop infestation. As with the specter of the gypsy moth, Congress is free to find that local regulation does wreak such havoc and enact legislation with the purpose of preventing it. We are satisfied, however, that Congress has not done so yet.

IV

We hold that FIFRA does not pre-empt the town of Casey's ordinance regulating the use of pesticides. The judgment of the Wisconsin Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

CONCURBY: SCALIA

CONCUR: JUSTICE SCALIA, concurring in the judgment.

I agree with the Court that FIFRA does not pre-empt local regulation, because I agree that the terms of the statute do not alone manifest a pre-emption of the entire field of pesticide regulation. Ante, at 611-614. If there were field pre-emption, 7 U. S. C. § 136v would be understood not as restricting certain types of state regulation (for which purpose it makes little sense to restrict States but not their subdivisions) but as *authorizing* certain types of state regulation (for which purpose it makes eminent **[**2488]** sense to authorize States but not their subdivisions). But the field-pre-emption question is certainly a close one. Congress' selective use of "State" and "State and political subdivisions thereof" would suggest the authorizing rather than restricting meaning of § 136v, were it not for the inconsistent usage pointed to in Part I of the Court's opinion.

[*617] As the Court today recognizes, see ante, at 606-607, the Wisconsin justices agreed with me on this point, and would have come out the way that I and the Court do *but For* the Committee Reports contained in FIFRA's legislative history. I think they were entirely right about the tenor of those Reports. Their only mistake was failing to recognize how unreliable Committee Reports are -- not only as a genuine indicator of congressional intent but as a safe predictor of judicial construction. We use them when it is convenient, and ignore them when it is not.

Consider how the case would have been resolved if the Committee Reports were taken seriously: The bill to amend FIFRA (H. R. 10729) was reported out of the House Committee on Agriculture on September 25, 1971. According to the accompanying Committee Report:

> "The Committee rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions." H. R. Rep. No. 92-511, p. 16 (1971).

Had the grounds for the rejection not been specified, it would be possible to entertain the Court's speculation, ante, at 609, that the Committee might have been opposing only direct

conferral upon localities of authority to regulate, in contrast to state delegation **[***551]** of authority to regulate. But once it is specified that an excessive number of regulatory jurisdictions is the problem -- that "50 States and the Federal Government" are enough -- then it becomes clear that the Committee wanted localities out of the picture, and thought that its bill placed them there.

The House Agriculture Committee's bill was passed by the full House on November 9, 1971, and upon transmittal to the Senate was referred to the Senate Committee on Agriculture and Forestry, which reported it out on June 7, 1972. The accompanying Committee Report both clearly confirms the **[*618]** foregoing interpretation of the House Committee Report, and clearly endorses the disposition that interpretation produces.

> "[We have] considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concur with the decision of the House of Representatives. Clearly, the fifty States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether towns, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, it is the intent that section *[136v],* by not providing any authority *to* political subdivisions and other local authorities *of or* in *the* States, should be understood as depriving such local authorities and political subdivisions *of* any and alljurisdiction and authority over pesticides and the regulation *of* pesticides." S. Rep. No. 92-838, pp. 16-17 (1972) (emphasis added).

Clearer committee language "directing" the courts how to interpret a statute of Congress could not be found, and if such a direction had any binding effect, the question of interpretation in this case would be no question at all.

But there is still more. After the Senate Agriculture Committee reported the bill to the floor, it was re-referred to the Committee **[**2489]** on Commerce, which reported it out on July 19, 1972. The Report of that Committee, plus the accompanying proposals for amendment of H. R. 10729, reconfirmed the interpretation of the Senate and House Agriculture Committees. The Report said:

> **[*619]** "While the Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, the report of that committee states explicitly that local governments cannot regulate pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators." S. Rep. No. 92-970, p. 27 (1972).

The Court claims that this passage, plus the amendment that it explains, show that "the two principal Committees responsible for the bill [were] in disagreement over whether it pre-empted pesticide regulation by political subdivisions." Ante, at 610. I confess that I am less practiced than others in the **[***552]** science of construing legislative history, but it to me that quite the opposite is the case. The Senate Commerce Committee Report does not offer a different interpretation of the pre-emptive effect of H. R. 10729. To the contrary, it acknowledges that the Report of the originating Committee "states explicitly that local governments cannot regulate pesticides in any manner," and then proceeds to a statement ("Many local governments now regulate pesticides, etc.") which questions not the existence